IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

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WRIT PETITION NO : 12525 of 1994

Between:

1. G.S.Hanumanthappa, s/o late G.Nagappa, 60 years.

2. Gandikota Subbarayudu,s/o Venkataramanappa, 45 years.

3. Gandikota Saradamba, w/o Subbarayudu, 35 years.

4. Talari Bojjanna, s/o Nalla Bommayya, 58 years.

5. Habib Sab, s/o Nadar Sab, 55 years.

6. G.Lakshminarayana, s/o late G.C.Subbarayappa, 28 years.

7. Smt.Talari Lakshmidevamma, d/o Talari Bojjanna, 35 years.

(All the petitioners are residents of Kambadur village & Mandal, Ananthapur District)

..... PETITIONERS

AND

1. The Commissioner for Land Revenue,

Government of Andhra Pradesh at Hyderabad.

2. The Joint Collector, Ananthapur District, Ananthapur.

3. The Revenue Divisional Officer, Dharmavaram Division,

Dharmavaram, Ananthapur District.

4. The Mandal Revenue Officer, Kambadur Mandal, Kambadur,

Ananthapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction more particularly one in the nature of writ of certiorari by calling for records relating to the order passed by the 2nd respondent-Joint Collector & Addl.District Magistrate, Ananthapur in his R.Dis.No.4316/94 dated 23-6-1994 confirming the orders of the 3rd respondent-Revenue Divisional Officder, Dharmavaram in his D.Dis.No.(B) 4106/93 dated 6-4-1994 and quash the same and direct the respondents not to initiate resumption orders with regard to the petitioners' land an extent of Ac.2.45 cents covered by RS.No.246/2 (Sub-Division No.246/2-C) of Kambadur village and Mandal, Ananthapur District.

Counsel for the Petitioners: Mr.G.KRISHNA MURTHY

Counsel for the Respondents: GP FOR REVENUE

The Court made the following ORDER:

The present writ petition has been preferred by the petitioners seeking to issue an appropriate writ order or direction more particularly one in the nature of writ of certiorari by calling for records relating to the order passed by the 2nd respondent-Joint Collector & Addl.District Magistrate, Ananthapur in his R.Dis.No.4316/94 dated 23-6-1994 confirming the orders of the 3rd respondent-Revenue Divisional Officer, Dharmavaram in his D.Dis.No.(B) 4106/93 dated 6-4-1994 and to quash the same and direct the respondents not to initiate resumption orders with regard to the petitioners' land an extent of Ac.2.45 cents covered by RS.No.246/2 (Sub-Division No.246/2-C) of Kambadur village and Mandal, Ananthapur District.

2. The case of the petitioners is that they had purchased an extent of Ac.0.60 cents of land covered by Sy.No.246/2 of Kambadur village from Harijana Muthyalakka and her sons (i) Praneswappa and (ii) Ramamurthy for valuable consideration under registered document No.1066 dated 16-10-1988, they constructed residential houses and cattle sheds etc., by spending considerable amount for development of the land and they are paying land taxes to the revenue authorities. It is their further case that R.S.No.246/2 covered by Ac.4.78 cents was a virgin land and in the year,1931, the then Revenue authorities granted patta in favour of one Harijana Githa Mareppa vide D.A.R.Dis.No.586/39, dated 12-6-1931 and after the demise of the said Githa Mareppa, his sons Harijan Pranesappa and Harijan Ramamurthy and his wife Muthyalakka succeeded to the said property and in the year 1989 they disposed of the said land to the petitioners. They also disposed of an extent of Ac.0.60 cents to Neeli Rajanna and in turn Rajanna sub-divided and sold it to 14 landless poor persons for construction of houses and they raised houses in the said land long time back and they have been residing in the said houses since then. The

petitioners' vendors disposed of the entire extent of Ac.4.76 cents to 45 persons including the petitioners for the purpose of construction of residential houses and they have been in possession and occupation of their respective lands since long time.

3. While so, the Mandal Revenue Officder-4th respondent issued notices in the month of June,1989 only to the petitioners herein calling upon them to show cause why they should not be evicted from their respective holdings on the ground that the said lands are assigned lands with certain stipulations and reserved for depressed classes and pattas were granted even in the year, 1954 and the pattadars being Harijans should sell the said lands to Harijans but not to other castes and to appear before him on 17-8-1989. In response to same, the petitioners submitted their explanations stating that they belong to the B.C. community and they are not having houses in the village and that they purchased the land for residential purpose etc., and not for agricultural purpose as the land is not fit for cultivation and that the land was assigned in favour of the said Harijana Githa Mareppa in the year, 1931and that there is no prohibition to alienate the assigned land to third parties by that time. Taking into consideration their explanation, the then Mandal Revenue Officer dropped proceedings, as the land is not suitable for agriculture. But, again, the 4th respondent in the month July,1993 issued another notice to the petitioners vide R.C.No.B.501/93 informing the petitioners that they purchased the said land from Harijana Pranesappa and his brother, Rama murthy, sons of Githa Mareppa who are Harijans and that the said land would be resumed as it is meant only for depressed classes and not others. Again in the month of August,1993, the 4th respondent issued another notice that the said lands will be resumed by the Government. Immediately after receipt of the said notice, the petitioners submitted their representations stating that they purchased the lands under registered documents or agreements from the vendors for residential purpose as the land is not fit for cultivation. The Mandal Revenue Officer has not taken any action on the representation. However, the 3rd respondent-Revenue Divisional Officer again issued notices to the petitioners calling upon them to state why action should not be taken for alleged violation of condition 7 of the D Form patta granted in favour of the said Githa Mareppa. Immediately, after receipt of the said notice, the petitioners submitted their explanations on 28-9-1993. Aggrieved by the said notice, the petitioners filed a writ petition No.15912 of 1993 before this Court, which was

disposed on 3-3-1994, directing the Revenue Divisional Officer to consider the explanation of the petitioners and dispose of the matter on merits and in accordance with law, by giving opportunity to all concerned, within two weeks from the date of receipt of a copy of the order and also directed that pending disposal of the matter by the Revenue Divisional Officer, the petitioners shall not be dispossessed from the lands in question. But, the Revenue Divisional Officer without complying with the directions of the order dated 3-3-1994, passed an order dated 6-4-1994 for resumption of the lands which are in possession of the petitioners. Against the said order, the petitioners filed an appeal before the 2nd respondent-Joint Collector, who without considering the contentions of the petitioners passed an order dated 23-6-1994 in R.Dis.No.4316/94 confirming the orders passed by the 3rd respondent-Revenue Divisional Officer in his D.Dis.No.(B)4106/93 dated 6-4-1994. Aggrieved by the said order, the petitioners filed an appeal before the 1st respondent-Commissioner for Land Revenue questioning the correctness and validity of the orders passed by the respondents 2 and 3. The 1st respondent rejected the appeal stating that there is no provision for appeal or revision to the Commissioner under the A.P.Assigned Lands (Prohibition of Transfer) Act, 1977 as against the orders of the Collector of Joint Collector by his order dated 4-7-1994 though the 2nd respondent-Joint Collector in his order dated 23-6-1994 stated that an appeal lies to the Commissioner for Land Revenue within 40 days from the date of order. Under those circumstances, the petitioners had filed the present writ petition.

4. Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

5. According to the respondents, the extent of land covered by R.S.No.246/2 (Sub-Division No.246/2-C) of Kambadur village, Kambadur Mandal, Ananthapur District is an assigned land of the year,1931. But, however, the petitioners herein have purchased the said land under registered document in the year,1988. It is their further contention that a matham by name Bum Bum Swamy Ashram was also built in some portion of the said land by the devotees. It is also contended that the provisions of A.P. Assigned Lands (Prohibition of Transfer) Act 9 of 1977 are not attracted and it is not having retrospective effect. Writ petition No.15912 of 1993 has been filed before this Court questioning the notice issued by the Revenue Divisional Officer. But, however, this Court on 3-3-1994 disposed of the writ petition on merits

with a direction to the Revenue Divisional Officer to consider the explanations given by the petitioners on 28-9-1993 and pass orders afresh after hearing all the concerned, within two weeks from the date of the receipt of the order. In pursuance of the said order dated 3-3-1994, the Revenue Divisional Officer has chosen to consider the explanation of the petitioners dated 28-9-1993 and has come to the conclusion that as per the condition No.8 of 'D' Form, the land shall not be alienated to other than the depressed class persons and if the land is alienated, the Revenue Divisional Officer is competent to resume the land to the Government. According to the Revenue Divisional Officer, the original assignee is a depressed class person, but, however, the legal heirs of the original assignee have alienated the land to a non-depressed class person and that all the purchasers are of non-depressed class persons. Basing on the above findings, the Revenue Divisional Officer has chosen to reject the explanation submitted by the petitioners against which, the petitioners have filed the appeal before the Joint Collector and the Joint Collector also confirmed the orders passed by the Revenue Divisional Officer by the impugned proceedings dated 23-6-1994.

6. The learned counsel for the petitioners has argued that even though an argument has been advanced before both the authorities with regard to the applicability of the provisions under the Act 9 of 1977, there is no finding as such, with regard to the applicability or otherwise of the same. There is no material available before the authority that the legal heirs of the original assignee late Mareppa have sold the land in question to the non-depressed class persons.

7. A reading of the impugned orders dated 23-6-1994 of the Revenue Divisional Officer also goes to show that there was no enquiry conducted with regard to the classification of the purchasers, i.e. whether they are depressed class persons or non-depressed class persons. It is also observed that there is no categorical finding as such, with regard to the applicability of the provisions of the Act 9 of 1977.

8. In view of the same, the orders of both the authorities are set aside and the matter is remanded back to the authorities for proper adjudication with regard to the classification of the persons whether they are depressed class persons or non-depressed class persons and also consequently, with regard to the applicability of the provisions of the Act 9 of 1977 to the particular circumstances of the case after

affording an opportunity to the parties.

9. With the above observations, the writ petition is disposed of. No order as to costs.

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(T.MEENA KUMARI,J)

2nd September, 2004.

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To

1. The Commissioner for Land Revenue,

Government of Andhra Pradesh at Hyderabad.

2. The Joint Collector, Ananthapur District, Ananthapur.

3. The Revenue Divisional Officer, Dharmavaram Division,

Dharmavaram, Ananthapur District.

4. The Mandal Revenue Officer, Kambadur Mandal, Kambadur,

Ananthapur District.

5. Two CCs to the GP for Revenue,

High Court Buildings, Hyderabad (O.U.T.)

6. Two CD Copies.